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RULES OF THE JAY
CIRCUIT COURT

FEB 01 1990

1.0 AUTHORITY--These rules are adopted pursuant to the authority of T.R. 81, Indiana Rules of Procedure, and are intended to supplement those rules. These rules shall govern the practice and procedure in the Jay Circuit Court.

Jane Ann Ramsey
CLERK JAY CIRCUIT COURT

2.0 GENERAL PROCEDURES

2.1 Withdrawal of Appearance. All withdrawals of appearance shall be in writing and by leave of court. Permission to withdraw shall be given only upon affidavit by counsel that the change will not result in a delay of trial. The withdrawing attorney shall give his client a ten (10) day written notice of his intention to withdraw (by certified mail) and file a copy of that notice, along with the certified receipt, with the court; or file a simultaneous appearance by new counsel. A letter of withdrawal shall explain to the client that the failure to to secure counsel may result in dismissal of the client's case or that default judgment may be entered against him, as appropriate, that he may waive the right to counsel and other pertinent information such as hearing and trial dates. In no event will the court grant a request for withdrawal of appearance unless the motion has been filed with the court at least ten (10) days prior to trial date, except upon a showing of inavoidance.

2.2 Enlargement of Time. A written motion for enlargement of time to respond to a claim pursuant to T.R. 6(B)(1) shall be automatically allowed for an additional thirty (30) days from the original due date without written order of the court. The motion shall state the date when the response is due and the time to which it is enlarged. The motion must be filed with the court and a copy served on the opposing parties on or before the original due date or this rule is inapplicable.

2.3 Continuances. Due to case load and calendaring problems, continuances are discouraged. Neither side is entitled to an automatic continuance as of right, and a continuance granted to one side does not entitle the other side to a continuance. Each motion for a continuance will be considered independently based upon statutory and procedural grounds. The courts reject the policy of automatic continuances either as policy or by purported custom or tradition.

A. Motion. A motion for continuance shall be in a verified writing with copies to opposing counsel. The court, in its discretion, may require that the

party sign the motion as well as counsel.

B. Agreement of Counsel. An agreement by counsel to continue will not be grounds for a continuance unless in compliance with Paragraph A of this rule or unless otherwise permitted by the court in its discretion.

C. Payment of Costs/Sanctions. All delays and continuances shall be at the cost of the responsible parties or counsel, except where otherwise provided by law, and the adverse party may have such costs taxed and judgment rendered, accordingly.

2.5 Discovery.

A. Time Limits. Discovery shall be completed within six (6) months after the case is at issue, unless otherwise ordered by the court. For good cause shown, a mental or physical examination of a party may be ordered, according to the rules, at any time prior to trial. Motions and stipulations for additional time within which to complete discovery will be granted only upon a showing of inadvertence and compelling need prior to the expiration of the six (6) months.

B. Interrogatories. Except for good cause shown, and by leave of the court, interrogatories shall be limited to a total of twenty-five (25), including subparts, and shall be used solely for discovery and not as a substitute for a deposition.

2.6 Pre-trial Conferences. There shall be a pre-trial conference in every case upon motion of a party or order of the court. Pre-trial conferences shall be conducted in accordance with T.R. 16 and any pre-trial order entered shall be signed by the court and shall control the course of the trial. The pleadings shall be deemed merged therein.

2.7 Setting Cases for Trial. Any party desiring a trial setting shall make a request for trial setting, accompanied by an affidavit that the matter is ready for trial. No Domestic Relations case will be deemed ready for trial unless the appropriate Financial Declarations or Support Worksheets have been properly completed and filed with the court.

2.8 Jury Costs. Whenever a matter has been placed on the jury calendar and a jury has been called, any resulting costs may be charged pursuant to statute against the parties or counsel responsible for the delay or untimely cancellation of the jury trial. If it was the joint responsibility of more than one of the parties or counsel, then the charges shall be divided equally among them.

2.9 Duties of Pro Se Parties and Attorneys. Attorneys shall prepare and file any orders, decrees or judgments, when directed by the court, within fourteen (14) days, nunc pro tunc to the effective date. Before filing, the order, decree or judgment shall be submitted to all other parties for prompt endorsement, unless the parties are in court to endorse the document. All pro se parties and counsel shall keep themselves informed of all steps taken in the case and all steps taken before the court; and they are bound by all actions taken including, but not limited to, rulings, notice of trial settings, and the current position of the case on the trial calendar--all without special or additional oral or written notice by the court. (See, Clauser, et al. v. Mock, et al. (1959), 239 Ind. 143, 148. They shall also keep the court advised of the proper address for notice to them.

2.10 Courts--General Provisions.

A. Hours of Court. The courts shall be open Monday through Friday, excepting legal holidays and other times when the commissioners close the courthouse. The hours shall be as posted on the door of the respective court office.

B. Courtrooms and Appurtenances. The entire third floor of the courthouse and the stairways and elevators leading to it are parts of the courtroom appurtenances. Presence in that area shall be for court business, and shall operate as consent to the courts' authority. All persons in that area shall conduct themselves peacefully and quietly.

C. Weapons. No person shall possess a weapon in or about the court appurtenances excepting law enforcement and court officers in the course of their duties. The court may at any time order the search for weapons on any person in that area.

D. Court Papers. No original records or pleadings are to be removed from a court file, nor shall any court file be removed except for use by the court. Violation of this rule shall be deemed contempt of court.

E. Law Library. No book may be removed from the law library except by the judges.

F. Judges Presiding in other Court. Whenever the judge who presides in the Circuit Court or Superior Court is absent or cannot, for any reason hear any cause pending in that court, or issue an emergency order, the other judge may preside and for that purpose he shall be considered and held to be the judge of that court in order to transact that business.

3.0 DOMESTIC RELATIONS

3.1 Policy. Public policy favors minimizing litigation, in general, and particularly in domestic relations cases. This is demonstrated by the fact that the legislature first authorized "no-fault" dissolutions then, as of late, the submission of uncontested dissolutions in writing, without hearing. There is ample evidence that unnecessary and protracted domestic relations cases are harmful to the litigants, their children and society as a whole. It is therefore the policy of this county's courts to facilitate dissolutions with a minimum of unnecessary litigation. It is with these policies in mind that we promulgate these rules and guidelines. These rules are not intended to deny a full and fair hearing of any matter when necessity dictates. However, through thorough development of the litigants' cases all participants will enjoy the benefits of more amicable settlements and better use of trial time.

3.2 Financial Declarations. Financial declarations in domestic relations cases include support worksheets, asset and liability schedules and any other supporting documentation required by the court from time to time. Financial declarations shall be completed in full on forms adopted by the courts and filed, along with the supporting documentation intended to be used as evidence, in all contested matters involving child support or property. The moving party shall file the appropriate form at or before the time a hearing is requested; and the adverse party shall file opposing forms not more than ten (10) days later, unless less than ten (10) days notice of trial setting is given, then as soon as is reasonably possible. Failure to comply with this rule will be deemed an admission of the facts set forth in the adverse party's financial declarations.

3.3 Admissability of Financial Declarations. Financial declarations which have been filed under this rule and which have not been specifically objected to at least ten (10) days in advance of trial, where such notice has been given, will be deemed admissible, subject to cross examination. Direct examination on matters contained in the financial declarations will not generally be permitted except to explain unusual matters or to make corrections.

3.4 Full Disclosure of Assets. The parties shall produce all information reasonably required to provide a full and complete statement of assets and liabilities, including financial statements previously furnished to others, income tax returns and bank statements. The court may require either party to supplement the financial declaration with appropriate appraisals, bank statements and other evidence

to support the values set out therein.

3.5 Modifications. No petition for modification of custody of children, child support or spousal maintenance will be entertained unless a full year has elapsed from the date of the last decision on that matter, except with advance permission from the court on good cause shown.

3.6 Receipt of Support, Property Settlement Funds and Attorney Fees by Clerk Before Judgment. The clerk of courts is authorized to accept payment of money for support, property settlement and attorney fees before, or without, judgment and to hold the same in trust until the court enters an order or judgment directing the clerk to pay it.

3.7 Definitions.

A. Contested Matter. "Contested matter," in domestic relations cases, means disputed issues involving child custody, support, spousal maintenance and visitation which may exist either before or after a final decree.

B. Extraordinary Medical Expenses. "Extraordinary medical expenses," in domestic relations cases, means the portion of medical expenses, incurred during a twelve month period, which exceeds six (6) per cent of the annualized Combined Parents' Support Obligation on the Support Worksheet and which is allocated to each parent on the same percentage basis as is the support obligation on that worksheet.

C. Reasonable Attorney Fees. For an uncontested dissolution, the reasonable maximum attorney fee shall be \$600.00, and for an uncontested modification, \$350.00. The court will presume that an equitable distribution of the total fees of both parties would be the same ratio as each of the parties' incomes bears to their total joint or attributable incomes. For a contempt citation, the reasonable maximum attorney fee shall be \$350.00, and it will be attributed to the losing party only if the prevailing party documents an informal effort to resolve the matter.

D. Substantial Change in Circumstances. A substantial change in circumstances, for changes in child support, means a change or changes which would result in the lesser of a \$15.00 per week or a 15% change in support under the current guidelines.

E. Reasonable Visitation. It is usually in the child's best interest for each parent to have frequent, meaningful and continuing access to the children. A visitation agreement made by both parents is preferable to a court imposed solution. However, if one or both

parents are unable to agree upon visitation, the following guidelines shall be used in most cases. In situations where the non-custodial parent may not have had on-going contact with the children, initial visitation may be shorter. Further, those provisions may not be applicable to very young children or in situations where geographical distances between parents make compliance impossible. The parents, in exercising visitation, should be flexible enough to adapt to the circumstances, the child's age, on-going activities, and any religious holidays not set out below.

SOLE CUSTODY

In sole custody orders, the primary care, custody and control of the minor children is granted to the custodial parent, subject to reasonable visitation by the non-custodial parent at such times and places as may be mutually agreed upon by the parties. If the parties do not agree, the following will be considered the MINIMUM visitation to which the non-custodial parent shall be entitled:

- (1) Alternating weekends from 6:00 p.m. on Friday until 6:00 p.m. on Sunday.
- (2) In years ending in an odd number:
 - (a) the night before each child's birthday;
 - (b) Memorial Day weekend from 6:00 p.m. on Friday until 7:00 p.m. on Monday;
 - (c) Independence Day from 6:00 p.m. on July 3rd until 7:00 p.m. on July 5th;
 - (d) Thanksgiving holiday from 6:00 p.m. on Wednesday until 7:00 p.m. on Sunday;
 - (e) From 6:00 p.m. on December 26 until 7:00 p.m. on January 1.
- (3) In years ending in an even number:
 - (a) each child's birthday;
 - (b) Easter weekend from 6:00 p.m. on Good Friday until 7:00 p.m. on Easter Sunday;
 - (c) Labor Day weekend from 6:00 p.m. on Friday until 7:00 p.m. on Monday;
 - (d) Spring break;
 - (e) Christmas holiday from 6:00 p.m. on December 20 until 6:00 p.m. on December 26.
- (4) Every year on non-custodial parent's and grandparents' birthdays with that respective person, and Father's Day or Mother's Day weekend with the applicable parent;
- (5) In the summertime (for pre-school children),

two weeks in June and two weeks in July--the dates to be determined by May 1 of each year.

- (6) In the summertime (for school-age children), two non-consecutive three week periods to be determined by May 1 each year.
- (7) There shall be no weekend visitation during the extended visitations.
- (8) If support is current, the support obligation shall abate by 50% during the visitation under paragraphs 5 and 6. If support is not current, the 50% that would have abated shall apply toward the arrearage.

Unless prior arrangements are made, the non-custodial parent shall pick up and return the children at the times specified, and the custodial parent shall have the children ready for visitation at the time they are to be picked up and shall be present at the home to receive the children at the time they are returned.

The non-custodial parent shall give the custodial parent three (3) days notice if he or she does not intend to exercise visitation unless an emergency situation exists, in which case he or she will give notice as soon as practicable.

Each parent shall supply the other with a current address at all times, and shall allow the children liberal telephone and mail privileges with the other parent.

The custodial parent shall provide copies of all school and medical reports within ten (10) days of their receipt and shall immediately notify the other parent in the event of a medical emergency. The custodial parent shall inform the non-custodial parent of school and/or social functions permitting parental participation within 24 hours of finding out about that function.

Neither visitation nor child support is to be withheld due to the other parent's failure to comply with a court order. If a dispute arises, they must first attempt to resolve it privately or through their attorneys, then through the court.

If the parties mutually agree to change the provisions of their current order, they shall petition the court to approve that change. The court cannot honor any change that was not approved by the court in advance.

4.0 CRIMINAL RULES

4.1 Initial Hearings. (Reserved.)

4.2 Bail Bond.

A. Setting Bail. The Court shall set the amount of bail that a person charged with a criminal offense shall be required to post. In the case of a person to be arrested pursuant to a criminal bench warrant, the amount of bail shall be endorsed on the warrant.

B. Bail Amount--Advise To Defendants. In the absence of a different amount of bail having been set by the Court pursuant to Paragraph "A" hereinabove and subject to the exceptions set forth hereinbelow, bail is hereby set by the Court as follows in all criminal cases filed in the Jay Circuit Court or the Jay Superior Court:

Murder	As Fixed By The Court
Class A Felony	\$30,000.00 surety
Class B Felony	\$10,000.00 surety
Class C Felony	\$ 5,000.00 surety
Class D Felony	\$ 3,000.00 surety
Class A, B or C Misdemeanor...	\$ 1,000.00 surety or cash

In the event that a person has been charged with multiple offenses arising out of the same incident, the person's bail shall be set in the amount applicable to the most serious offense only. In the event that the person has been charged with multiple offenses not arising out of the same incident, then the person's bail shall be as fixed by the Court.

All persons are to be informed before posting bail pursuant to this schedule that they may defer posting bail and remain in custody until their Initial Hearing at which time the Court will consider whether they are entitled to a lower bail based on their individual circumstances.

C. Habitual Offenders.

1. If the sentence of the person charged is sought to be enhanced by virtue of an allegation that the person is an habitual offender, the person's bail for the current alleged offense shall be increased by the sum of \$30,000.00.

2. If the sentence of the person charged is sought to be enhanced by virtue of an allegation that the person is either an habitual Class D Felony offender or an habitual substance offender, the person's bail for the current alleged offense

shall be increased by the sum of \$8,000.00.

D. **Holding Without Bail.** Notwithstanding the above-stated bail schedule, the Sheriff shall detain a person charged with a crime until the Court is next in session or until the Judge thereof can otherwise be reached to set bail if the Sheriff has reason to believe:

1. that the person has previously escaped from jail or a mental hospital;
2. that the person has previously failed to appear in any Court as ordered;
3. that the person has an outstanding warrant or detainer against him;
4. that the person is currently released on his own recognizance or on bond on another pending charge;
5. that the person is mentally disturbed or incompetent;
6. that the person is currently on probation, parole or under a withheld or suspended sentence;
7. that the person has a prior felony conviction;
8. that, for any other reason, the person charged presents a disproportionate risk of non-appearance in Court on the current charge.

E. **Conditions of "O.R."**. If a person has been arrested for a misdemeanor, and is not precluded from immediately posting bail by virtue of the provisions of Paragraph D, the person shall be released on his own recognizance if the person was not arrested for a battery and the person has had substantial contacts with Jay County for a continuous period of three (3) years immediately prior to the date of the person's arrest. Substantial contacts with Jay County mean a continuous residence or place of employment in Jay County during such period.

F. **Cash, Surety, or Property Bonds.** In the absence of prior Court approval, bail may only be posted in the form of a surety bond in the case of a person who is charged with a felony. In the case of a misdemeanor, bail may be posted in the form of a cash bond, surety bond or, subject to the limitations set forth hereinbelow, a cash deposit. Property bonds may not be posted without the prior approval of the Court.

G. **10% Cash Deposit In Lieu Of Bond.** In the case of a resident of the State of Indiana who is charged with a misdemeanor, unless the Court otherwise specifies, the person may execute a bail bond by depositing cash in an amount equal to ten per cent (10%) of the person's bail. In such case, the following conditions shall apply to said bond:

1. The Clerk shall retain an administrative fee

equal to ten per cent (10%) of the deposit, or Fifty Dollars (\$50.00), whichever is less.

2. The Clerk shall retain an additional Five Dollar (\$5.00) fee from each deposit and shall semiannually remit this fee to the board of trustees of the public employee's retirement fund.

3. If any assigned counsel represents the defendant and there are publicly paid costs of representation, then the deposit, less the fees retained by the Clerk shall be retained by the Clerk and deposited in the supplemental public defender services fund.

4. Following the disposition of the charge against the person, the Clerk shall remit to the person the difference, if any, between the amount of the cash deposit and the fees retained by the Clerk and the publicly paid costs of representation, if any.

5. If a person posts a cash deposit under this Paragraph and fails to appear before the Court as ordered, the Court shall issue a warrant for the person's arrest and then declare the bond forfeited. The Court shall also enter judgment against the person for the full amount of the bail bond.

6. In any case where a cash deposit is posted under this Paragraph, the cash deposit must be posted in the name of the person charged and shall be considered the personal asset of the person charged.

7. In any case where a cash deposit is posted under this Paragraph, the receiving officer shall advise the person posting such deposit of each of the above-listed conditions; however, failure to advise any such person of these conditions shall not constitute a waiver of said conditions.

H. Holding Intoxicated People. The Sheriff may use the chart set forth in I.C. 35-33-1-6 to determine the minimum number of hours that a person be released from detention while still in a state of intoxication.

5.0 PROBATE RULES

5.1 Emergency Matters.

A. Any probate matter which needs immediate attention may be brought before the Judge between 8:30 A.M. and 9:00 A.M. daily, without appointment.

B. After 9:00 A.M. daily, an appointment to see the

Judge regarding emergency probate matter should be made with the reporter. (726-4044)

5.2 Fees of Attorneys and Personal Representatives

A. No fees for personal representatives, guardians, or attorneys shall be paid out of any supervised estate or guardianship without prior written Order of the Court.

B. Final fees in supervised estates and guardianships shall not be paid until the Court has approved the final account. All Orders for final fees shall provide that said fees are to be paid only after approval of the final account. This rule does not preclude payment of partial fees during administration after obtaining a written Court Order for same.

C. No petition for fees of personal representative or attorney need be filed in unsupervised administration.

5.3 Bond

A. In every supervised estate and guardianship, the personal representative, before entering duties, shall file a bond not less than the value of the personal property to be administered, plus the probable value of annual rents and profits of all property of the estate, except as hereinafter provided.

1. Where, under the terms of the Will, the testator expresses an intention that the bond be waived, the Court shall set a bond adequate to protect creditors, tax authorities, and devisees.

2. Where the personal representative is an heir or legatee of the estate, the bond will be reduced by said personal representative's share of the estate.

3. Where the heirs or legatees have filed a written request that the personal representative serve without bond, the bond will be set in the amount adequate to protect the rights of the creditors and tax authorities only.

4. No bond shall be required in unsupervised administration.

5. No bond shall be required in any supervised estate or guardianship in which a corporate fiduciary qualified by law to serve as such is either the personal representative or one of several co-personal representatives or guardian.

B. In lieu of a bond as required by Rule 5.3, a personal representative or guardian may restrict transfer of all or part of the estate or guardianship liquid assets by placing those assets in a federally-insured financial institution with the following

restriction placed on the face of the account or document: No principal or interest shall be withdrawn without written Order of Jay Circuit Court. Proof of the restriction shall be provided to the Court within seven (7) days of the appointment of the personal representative or guardian. The bond requirement shall be reduced by the amount of the funds restricted pursuant to this rule.

5.5 Real Estate.

A. In all supervised estates and guardianships in which real estate and guardianships in which real estate is to be sold, a written professional appraisal setting forth the fair market value thereof must be filed with the Court at the time of filing the Petition for Sale, unless such an appraisal was filed with the Inventory.

B. A copy of all deeds in estates or guardianships must be filed with Reports of Sale for the Court's records.

C. Whenever a Final Decree reflects that real estate located in Jay County has vested in heirs or beneficiaries, the Decree must be recorded with the Jay County Recorder and evidence of said recording shall be provided to the Court with the Supplemental Report.

5.6 Inventory. In all guardianships and supervised estates, an inventory must be filed with the Court within 2 months after the appointment of the personal representative or guardian.

5.7 Sale of Assets

A. In all supervised estates and guardianships, no Petition to Sell Real or Personal Property will be granted unless a written professional appraisal, setting forth the fair market value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the Inventory.

B. All appraisals required by Rule 5.5 or 5.7 shall be made within one year prior to the date of the Petition to Sell.

C. No written appraisal shall be required for the sale of assets which are traded in a market and the value of which is readily ascertainable. Such assets include, but are not limited to, stocks, bonds, mutual funds, commodities, and precious metals.

5.8 Accountings

A. Whenever an estate cannot be closed within one (1) year, an intermediate account shall be filed with the Court within thirty (30) days after the expiration of one (1) year and each succeeding year thereafter. Such accounting shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6 and:

1. Shall state facts showing why the estate cannot be closed.

2. Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

B. All guardianship accountings must contain certification of an officer of all financial institutions in which guardianship assets are held, verifying the account balance.

C. All Social Security or Medicare benefits received on behalf of the Ward must be included and accounted for in guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility.

D. In all supervised estate and guardianship accountings, vouchers for the expenditures claimed must be filed with the accounting. No affidavits in lieu of vouchers will be accepted.

E. In all supervised estate and guardianship accountings, a notation shall be placed by each expenditure indicating the reason for or nature of the expenditure unless the payee name indicates the nature of the expenditure.

Example:

Hooks Drugs-toiletries for ward

Dr. John Jones

Sam Smith-repair work to ward's residence

Tendercare Nursing Home

5.9 Guardianships. In addition to the above probate rules, the following rules are applicable to guardianships:

A. In all guardianship matters seeking to declare an adult incompetent for any reason, at a minimum a Physician's Report by the doctor treating the alleged incompetent must be presented at the time the petition is filed or on the hearing date. No determination will be made without supporting medical report or testimony.

B. Current reports filed by a guardian of the person must state the present residence of the ward and his general welfare. If the ward is an incompetent adult, an affidavit of a treating physician must be filed with the current report, verifying that the incompetency of the ward remains unchanged since the date the guardianship was established or the date of the last current report and that the living arrangement for the ward is appropriate.

C. In every petition for the appointment of guardian of the person of a minor child, the following information shall be given:

1. The child's present address;
2. The places where the child has lived within the past two (2) years and the names and present addresses of persons with whom the child has lived during that period;
3. Whether, to petitioner's knowledge, any other litigation is pending concerning the custody or claims to have custody or visitation rights with respect to the child.

5.10 Maximum Fee Guidelines and Rules for Supervised Estates

A. Preamble

1. Purpose of the Fee Schedule. The Probate Committee of the Indiana Judicial Conference has prepared Guidelines for Estate Fees in an effort to achieve the following objectives:

- a. Establish uniformity throughout the State in determining a fair and reasonable fee for supervised estates;
- b. Provide a guideline to assist the Court in determining fair and reasonable fees;
- c. Furnish a guideline to Attorneys so they can discuss fees that may be reasonably incurred with their Clients at the onset of administration;
- d. Assist the legal profession to arrive at a fair and reasonable fee for estate work.

The schedule is NOT a minimum fee schedule, but a maximum fee schedule. Every Attorney and Personal Representative has an obligation to request a fee which is fair and reasonable for the work performed, taking into account that provisions of the Rules of Professional Conduct applicable to Attorneys admitted to practice law in the State of Indiana. However, any request for fees should not exceed the guidelines set out in the schedule. In an uncomplicated estate, fees

should be less than the maximum fees listed in this schedule, and fees should always bear a reasonable relationship to the services rendered.

2. Principles Applicable to Fee Determinations. Although fee Guidelines have been promulgated by the Court for Probate matters, it is important that your attention be directed to certain criteria as they pertain to these Guidelines.

The existence of the Guidelines does not assure that all fees allowed by the Court will adhere to them. Other factors must be considered by the Attorney and his, or her, Client. The same factors will also be considered by the Court in making its final determination.

The criteria to be considered including the following:

a. The time and labor required, the novelty, complexity, or difficulty of the questions involved, the skill required to perform the services properly, and shall include a determination as to how much of the Attorney's time was devoted to legal matters and how much of it was devoted to ministerial functions:

b. The nature and extent of the responsibilities assumed by the Attorney and the results obtained, and shall include the considerations of the identity of the Personal Representative and the character of the probate and non-probate transferred assets;

c. The sufficiency of assets property available to pay for legal services, and shall consider whether the Attorney's duties are expanded by the existence of non-probate assets be cause of their inclusion for tax purposes, both federal and state;

d. The timelessness with which the necessary services are performed consistent with statutory requirements, the Court's rules of procedure and the Rules of Professional Conduct applicable thereto.

In considering all of these factors, all Attorneys are urged to discuss their fee and that of the Personal Representative at the time they are retained in all Probate matters.

B. Attorney Fees

1. Administration: Gross Estate services are considered to normally include: Opening of the Estate, qualifying the Personal Representative,

preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing the Inheritance Tax Schedule, obtaining the Court Order thereon and paying the taxes, preparing and filing the Final Report, obtaining order approving same, distributing assets, obtaining discharge of the Personal Representative, and preparing and serving all notices on interested parties and readily ascertainable creditors throughout the proceedings. This list shall not be considered to be exclusive.

a. Gross Estate:

Up to \$100,000, not to exceed6%
Next 200,000, not to exceed4%
Next 700,000, not to exceed3%
Over 1,000,000, not to exceed1%

b. Miscellaneous-Extraordinary Services:

Sale of Real Estate\$500.00
Federal Estate Tax Return:
Basic Fee\$600.00
Assets exceeding those indicated in
Inheritance Tax Schedule1%
Inheritance Tax Schedule
Cash, stock, bonds, other
tangibles-non-probate assets ...1%
Other assets-non-probate assets 1.5%
Petition-ex parte\$175.00
Other Than as Provided Above \$85.00 per
hour

(Attorney's expertise in probate matters
will be considered by the Court in de-
termining the applicable hourly rate.)

2. Miscellaneous:

Probate Will only\$175.00
Small Estate settlement procedure ...\$300.00
Inheritance Tax Schedule (see above)
Federal Estate Tax Return (see above)

3. Wrongful Death Administration:

Fees not to exceed:

Settlement prior to filing25%
Settlement after filing and prior
to Trial33-1/3%
Trial40%
Appeal, or extra work50%

4. General: Fees Will be computed on an hourly
basis only for extraordinary services or for
services not specified above. Fee petitions
requesting extraordinary fees must set forth
services rendered with specificity. Extraordinary

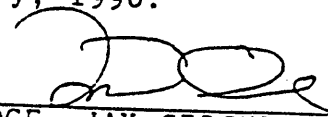
services, depending upon the circumstances prevailing in each individual matter, may include; sale of personal property, sale of real property, partial distribution, defending a Will, construing a Will, contesting claims, adjusting tax matters, any contested hearing, petition for instructions, heirship determination, generating additional income for Estate, federal estate tax return, etc. All fee petitions must specifically set forth the fee requested for both the Personal Representative and the Attorney and will be set for hearing. If all interested parties sign a waiver and consent stating that they have been advised the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may not require a hearing. A suggested form of acceptable waiver is attached. The Court will not determine and allow fees in an Unsupervised Administration. Fees determined on non-probate transferred assets should be charged against the transferees of these assets and not the Estate.

C. Personal Representative Fees

1. Professional: Their applicable reasonable rate to be reviewed in light of all prevailing circumstances.
2. Non-Professional: An amount not in excess of one-half (1/2) of the Attorney's fee.
3. Attorney: When the Attorney also serves as the Personal Representative, an additional amount not in excess of one-third (1/3) of the Attorney fee may be allowed, provided:
 - a. Additional services have been performed which are normally done by the Personal Representative; and
 - b. Assets of the Estate warrant the allowance of additional fees.

D. Limitation on Fees. In all instances, the combined total of the fees allowed to the Personal Representative and Attorney for the administration of an Estate shall not exceed ten percent (10%) of the decedent's gross estate.

So ORDERED this 1st day of February, 1990.


JUDGE, JAY CIRCUIT COURT